IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2241 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
DASHRATHBHAI MOHANBHAI DESAI - Opponent(s)

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Appearance :
Mr.Pradeep D.Bhate,learned APP for Appellant(s) : 1,
MR RJ GOSWAMI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/08/2007

ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. The appeal is admitted. Mr.R.J.Goswami, learned advocate, waives service of notice of admission on behalf of the respondent. At the request of parties and in the facts and circumstances of the case, the appeal is being heard and finally disposed of today.

2. The present appeal under Section 378 of the Code of Criminal Procedure, 1973 has been filed by the appellant-State of Gujarat, being aggrieved by the judgment and order dated 9th September, 2004 rendered by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No.25 of 2004, whereby the respondent (original accused) has been acquitted of the offence punishable under Section 306 of the Indian Penal Code.

3. Briefly stated the facts giving rise to the case of the prosecution are that a complaint dated 15th

November,2003 was received at Jadar Police Station, which was registered as Crime Register No.I-86 of 2003. The complainant is the brother of the deceased Maheshbhai. According to the case of the prosecution, the deceased was a resident of village Mudeti, Taluka Idar, District Sabarkantha and was married to one Sangeetaben, whose paternal village was Chitroda. While the deceased and Sangeetaben were living at village Mudeti, the accused came into contact with Sangeetaben and began to have illicit relations with her. According to the prosecution case, the accused was financially and physically a powerful man and used to forcibly enter the house of the deceased in order to carry on illicit relations with Sangeetaben. Further, according to the prosecution story, the accused used to come to the house of the deceased in a drunken condition and create scenes and on two or three occasions he had also beaten up the deceased. Since the deceased had become tired of the harassment meted out to him by the accused, he had gone to live in Chitroda. However, according to the prosecution case, when he and Sangeetaben had visited Mudeti a week before the incident, the accused had come to the house of the deceased at about 12.30 at night in a drunken condition, had banged on the door

and shouted for Sangeetaben to come out of the house. According to the prosecution story, this behaviour continued till 2.30 A.M. when the accused was taken away by one Pravinbhai Desai. Early next morning, the deceased and Sangeetaben returned to Chitroda. However, it is the case of the prosecution that the accused used to threaten the deceased over the telephone and due to the fear of the accused and the harassment meted out by him, the deceased had committed suicide by hanging himself.

4. This complaint was despatched by the complainant by post to the District Superintendent of Police, Himatnagar, which was thereafter forwarded to Jadar Police Station. The investigation was commenced and statements of witnesses were recorded. Pursuant to the registration of the complaint, the investigative machinery was put into motion. During the course of investigation, inquest was held on the dead body of the deceased, which was then sent for autopsy, panchanama of the scene of offence was prepared and statements of witnesses were recorded. At the end of the investigation, as sufficient incriminating evidence was found against the accused, he came to be

charge-sheeted before the learned Judicial Magistrate, First Class, Idar. As the offence under Section 306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the court of learned Additional Sessions Judge, Sabarkantha at Himatnagar, which came to be registered as Sessions Case No.25 of 2004. The learned Additional Sessions Judge, to whom the case was made over for trial, framed the charge against the accused on 15th March, 2004, which is at Exh.4 which was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried. Accordingly, the accused was put to trial.

5. In support of the case of the prosecution as many as twelve witnesses were examined. After recording of the evidence of the prosecution witnesses was over, the learned trial Judge explained to the accused the statements appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code of Criminal Procedure, 1973. The defence of the accused was plain and simple denial.

6. At the end of the trial, on appreciation and evaluation of the evidence on record, the learned trial Judge came to the conclusion that the prosecution has not been able to prove beyond reasonable doubt that the deceased was subjected to harassment by the accused due to the alleged illicit relations of the accused with the wife of the deceased and thereby had driven the deceased to commit suicide. Accordingly, the learned trial Judge acquitted the accused of the offence with which he was charged, giving rise to the present appeal.

7. We have heard Mr.Pradeep D.Bhate, learned Addl.Public Prosecutor for the appellant and Mr.R.J.Goswami, learned counsel for the respondent at length and have perused minutely, the Record of the case as well as copies of the statements of witnesses supplied by the learned Addl. Public Prosecutor. Mr.Pradeep D.Bhate, learned Addl.Public Prosecutor has vehemently urged that the evidence on record, especially the testimony of the witnesses are sufficient to bring home the guilt of the accused. According to him, P.W.2 (brother of deceased), P.W.3

(father of deceased), P.W.5 (sister-in-law of deceased), P.W.7 (wife of deceased) and P.W.4(mother of deceased) have all stated that the accused used to harass and threaten the deceased, time and again, and created scenes outside his house. According to the learned Addl.Public Prosecutor, the trial court has not properly appreciated the evidence on record and has wrongly recorded a finding of acquittal. He has prayed that the reasons given by the trial court for acquittal being neither cogent nor reasonable, the appeal may be allowed and the order of acquittal set aside.

8. On the other hand, Mr.R.J.Goswami, learned counsel for the respondent, has urged that the trial Court has rightly appreciated the evidence on record and the reasons recorded by the trial court for acquittal are reasonable and cogent. The evidence has been properly appreciated by the learned trial Judge. He submits that since this is an appeal against an order of acquittal, the judgment and order rendered by the learned trial Judge deserves to be upheld as proper and plausible reasons for acquittal have been recorded and no interference is warranted. He has,

therefore, prayed that the appeal be dismissed.

9. In this background, having heard and considered the rival submissions, it is necessary to evaluate and re-appreciate the evidence recorded by the trial court and the reasons assigned for acquittal of the accused, by briefly summarising the salient features of the oral evidence of the prosecution witnesses.

10. P.W.2 Jagdishbhai Revabhai, who is examined at Exh.14, is the complainant and brother of the deceased. He has stated in his deposition that the deceased Maheshbhai was living at Mudeti with his wife Sangeetaben and was doing masonry work. Sangeetaben used to accompany him for work and about two years previously, the deceased and his wife had taken up the work of the house of the accused, at Mudeti. According to him, on the night of 14th January 2003 the accused came to the house of the deceased and started shouting that the wife of the deceased should go alongwith him and due to the harassment and threats given by the accused, the deceased and his wife had gone to live at Chitroda, which is the paternal village of Sangeetaben. According to this

witness, the deceased lived with his wife at Chitroda for about seven months. Thereafter, on 11th November, 2003 the deceased, alongwith Sangeetaben came to village Mudeti to attend a religious ceremony and that night the accused had come to the house of the deceased in a drunken condition and threatened to kill him. Therefore, the next morning the deceased and Sangeetaben had gone back to village Chitroda. This witness had stated that the father of the deceased who had lived at village Mudeti had telephoned him to come to Mudeti but the deceased had not gone there. On 14th November, 2003 one Virchandbhai of village Chitroda had telephonically informed the complainant party that the deceased had died. This witness had stated that on reaching the house of the deceased at Chitroda, the deceased was found hanging from the swing, near the window, in the courtyard of his house. Thereafter, the police was informed and the body was sent for post mortem. This witness states that after this incident, he was informed by some person that his brother (deceased) was murdered. According to this witness, the deceased committed suicide due to the illicit relations between the accused and his wife Sangeetaben and the harassment meted out by the

accused. This witness has stated in his examination-in-chief that the deceased had not committed suicide but has admitted that he had stated in the complaint that his brother Mahesh had committed suicide.

11. P.W.3 Revabhai Motibhai Prajapati is the father of the deceased and his deposition is at Exh.19. He has stated in his examination-in-chief that the deceased and his wife Sangeetaben had undertaken masonry work at the house of the accused and there were illicit relations between the accused and Sangeetaben. According to him he was informed by his wife (P.W.4) regarding the harassment meted out by the accused to the deceased. This witness has also stated that the deceased and his wife, alongwith their children had gone to live at Chitroda about eight months prior to the incident. In his cross-examination, this witness has stated that it does not seem possible that the deceased has committed suicide but, it is likely that he has been murdered.

12. P.W.4 Santokben Revabhai Prajapati is the mother of the deceased and her testimony is to be found at Exh.20. She has more or less reiterated the same

story as narrated by other prosecution witnesses regarding the illicit relations of the accused and Sangeetaben and the scenes created by the accused at night outside the house of the deceased. This witness has also stated that the deceased and his wife had gone to live at Chitroda.

13. Almost similar is the testimony of P.W.5 Kamuben Jagdishbhai Prajapati, wife of Jagdishbhai (P.W.2), who has been examined at Exh.21 and P.W.6 Ramjibhai Mulchandbhai Prajapati, uncle of the deceased, who has been examined at Exh.22.

14. Sangeetaben, wife of deceased Maheshbhai, has been examined as P.W.7 and her testimony is at Exh.25. According to her, she used to go for masonry work with her husband at village Mudeti. Her husband had done masonry work for the accused, and had been paid Rs.80,000/- for the same, out of which they had built their own house at Mudeti. According to this witness, the deceased and the accused used to quarrel often, since the accused wanted to have illicit relations with her, which was objected to by her husband. Thereafter, the deceased had stopped her

from going for work at the house of the accused. However, as per the say of this witness, the accused used to come in a drunken condition to the house of the deceased and shout for her to come out of the house and threaten them with dire consequences. According to Sangeetaben, due to this harassment of the accused, they had left Mudeti and had gone to live at Chitroda, alongwith their children. On 11th November, 2003 she, alongwith the deceased were in village Mudeti and at that time also the accused had created a scene in a drunken condition outside their house at night and had threatened the deceased with dire consequences, due to which they had left for Chitroda on the next morning. According to Sangeetaben, on the fateful night, after having returned from work, the deceased had gone to sleep at about 11 'O' clock. Early the next morning when Sangeetaben woke up to give a drink of water to her son, she found her husband missing from the bed and, on opening the door, she saw him hanging by a rope from the swing, in the courtyard outside. In her cross-examination, this witness had categorically denied that the deceased and the accused used to quarrel because the accused wanted to have illicit relations with her. She has also denied that when

they had visited Mudeti for a religious ceremony, the accused had created a scene which lasted till 3 '0' clock at night outside her house and had threatened the deceased because he wanted to have illicit relations with her. This witness has admitted that since about two years, she was not on good terms with her mother-in-law and father-in-law.

15. P.W.8 Arkhiben Bhikhabhai Prajapati is the mother of Sangeetaben, who has been examined at Exh.26. She has stated that the accused used to shout at and threaten the deceased and that she had been told by Sangeetaben that the accused used to tease her and harass the deceased.

16. After appreciating the evidence of the witnesses, as stated above, the trial court came to the conclusion that there was no material on record to prove that the accused had instigated or abetted the deceased to commit suicide. Merely because the deceased used to create a scene outside the house of the deceased in a drunken condition and harass him is not enough to conclude that the accused was guilty of abetting the suicide of the deceased. Since the

prosecution has failed to prove the charge against the accused, the trial court recorded a finding of acquittal.

17. We have carefully scrutinised the original record and proceedings summoned from the trial court as well as copies of the testimony of the witnesses and have also examined the reasons for acquittal recorded by the trial court, in the light of the evidence on record. On re-appreciation of the evidence and consideration of the vital features of the case as well as reasonable probabilities arising out of the circumstances of the case, we are of the considered view that there is no infirmity in the judgment and order of the trial court.

18. It is not in dispute that the cause of death of the deceased was "Asphyxia due to hanging". This is evident from the post mortem report at Exh.10. Even though P.W.2 and P.W.3 have stated that the deceased has not committed suicide but has been murdered, in the complaint itself, given by Jagdishbhai (P.W.2) it has been categorically stated that the deceased had committed suicide due to the fear and harassment

caused by the accused. From a conjoint reading of the testimony of the prosecution witnesses, as discussed herein-above, it is amply borne out that the deceased and his wife had gone to live at Chitroda about seven to eight months prior to the incident, whereas the accused was living at Mudeti. There is nothing on record to prove that the accused used to come to Chitroda or threaten and harass the deceased there. In fact, the evidence of P.W.3 (father of deceased), P.W.4 (mother of deceased) and P.W.7 (Sangeetaben) reveals that the father of the deceased had asked him to come to Mudeti but he did not go there. The incidents of harassment described by the witnesses are not proximate to the time of death of Mahesh but are supposed to have taken place much before he left to live in Chitroda. There are contradictions in the testimony of the witnesses, on material particulars. Sangeetaben, predictably, gives a different turn to the story by first admitting, and then denying that the accused created scenes outside their house at night and harassed the deceased.

19. In fact, there is not an iota of evidence to the effect that the accused had, by his acts or omission

or by a continued course of conduct, created such circumstances or caused such a degree of harassment that the deceased was left with no other option except to commit suicide. The alleged harassment, which has been referred to by the witnesses, does not appear to be of such an incessant, persistent and unbearable nature which could have led the deceased to take the extreme step of ending his life. It is amply borne out by the testimony of the prosecution witnesses discussed above that the deceased and his wife had left Mudeti and gone to live at Chitroda seven or eight months prior to the fateful incident. The accused was living at Mudeti. The deceased and his wife were, therefore, away from the influence or fear of the accused for a considerable period of time. Had the threat or harassment from the accused been of such an unbearable nature, the parents of the deceased would not have asked him to visit Mudeti, since they were aware of the incidents of drunken behaviour of the accused, as stated by them. The evidence does not reveal that the deceased had any contact with the accused at Chitroda. The deceased had gone to work, as usual, according to the statement of Sangeetaben and had slept at about 11 '0' Clock at night, only to be found hanging from the

swing, early the next morning. There is no suicide note by the deceased, to give any indication of his state of mind. Whatever be the reasons weighing upon the mind of the deceased which drove him to commit suicide,looking to the evidence on record, it cannot be said that the accused had caused such a degree of continuous harassment to the deceased, so as to compel him to put an end to his life.

20. For the prosecution to bring home the charge under Section 306 of Indian Penal Code, there must be evidence on record to show that soon before the incident, there was some harassment to the deceased at the hands of the accused. Section 107 of Indian Penal Code deals with abetment and in order to constitute this offence, (a) instigation to commit the offence, (b) engaging in conspiracy to commit the offence and, (c) aiding the commission of an offence, have to be present. It necessarily follows that there has to be some active suggestion or support from the accused to the deceased for the commission of the offence by act, omission or provocation. In **Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618** the Supreme Court has aptly observed as under:

> “20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

21. Applying the principles laid down by the Supreme Court to the facts of the present case, in the light of the evidence on record, it cannot be inferred that the accused had by his act or omission or a continued course of conduct instigated the deceased to commit suicide.

22. In our considered view, therefore, there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the accused.

23. Lastly, it has to be kept in mind that the present is an appeal against acquittal and unless the reasons assigned by the trial court for acquittal are perverse, legally unsustainable or highly improbable, the court would be slow to interfere with an order of acquittal. In the instant appeal, this Court finds that the reasons given by the trial court for recording the order of acquittal in favour of the accused are plausible, cogent and convincing.

24. As observed by the Supreme Court in **Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773** "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the

guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.” In this appeal, the evidence adduced is consistent with the innocence of the accused and the finding recorded by the trial court does not deserve to be interfered with.

25. In the ultimate analysis, we do not find any valid reason or justifiable ground to disturb the judgment and order of the trial court, acquitting the accused.

26. For the foregoing reasons, the appeal is dismissed.

(J.R.Vora,J)

(Smt.Abhilasha Kumari,J)

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